

**RECEIVED**

**Copyright Royalty Board**

**Docket No. 14-CRB-0001-WR  
(2016-2010)**

The Services’ Motion asking the Copyright Royalty Board to issue subpoenas to nonparticipant Apple for expedited discovery would have this Board put Apple in an impossible position. If issued, the requested subpoenas would require Apple to produce immensely voluminous, highly sensitive and confidential documents and testimony to Apple’s competitors in a timeframe that simply is not achievable. Having waited until the eleventh hour to assert their “need” for information from Apple, the Moving Services have effectively made it impossible for Apple to comply with any subpoenas on the timetable they have requested. In particular, Apple was not even authorized by the participants to review an unredacted version of the Services’ Motion until just two days ago, on April 6, 2015, and thus has only recently been

made aware of what the Moving Services are actually seeking. Moreover, as a nonparticipant, Apple has never seen any of the discovery in this proceeding, or been able to access any of the participants' unredacted rebuttal statements, including the complete testimony of SoundExchange's expert Professor Daniel L. Rubinfeld concerning the Apple agreements that supposedly led to the Services' Motion. Thus, even though Apple belatedly received the unredacted motion papers, as a nonparticipant, it still does not have the information it needs to fully evaluate and respond to the Services' Motion seeking last-minute, overbroad, invasive, and unnecessary discovery.

The attempt to put this belated burden on Apple is particularly egregious in light of the fact that the agreements between Apple and two of the "major" labels, Sony Music Entertainment ("Sony") and Warner Music, Inc. ("Warner") (the "Apple agreements") regarding the iTunes Radio service specifically provided that the agreements were [REDACTED]

[REDACTED] As a result, the requested information cannot possibly be "central" to this proceeding and thus the requested subpoenas should be denied.<sup>1</sup> Even more unsettling, the Services' Motion asks the Board to use its exceptional subpoena power to require nonparticipant Apple to, *inter alia*, provide the participants with Apple's highly sensitive financial projections, its negotiating strategy with the labels, and its confidential and proprietary future plans for its new iTunes Radio service. *See* Services' Motion, Attachments A and B.

Imposing the highly burdensome third-party discovery that the Services' Motion seeks is contrary to the decisions of the Copyright Office, the Judges' own precedent, and the well-

---

<sup>1</sup> The fact that the Moving Services' proposed subpoenas would require Apple to provide commercially sensitive information about an [REDACTED] to its direct competitors is of particular concern to Apple. Although Apple recognizes that there is a protective order in this proceeding, Apple's understanding is that the protective order has limits with respect to the Judges' hearings in this matter.

established precedents of the federal district and circuit courts. Indeed, the Copyright Royalty Judges have previously said that they will only exercise their subpoena power if the information sought is **both** “central to the resolution of the proceeding” **and** unlikely to otherwise be obtained. Neither requirement is met here, however, as (1) the Moving Services’ proposed subpoenas seek information that is not central to this proceeding because the Apple agreements explicitly state that they are [REDACTED], and (2) the Judges have already given the Moving Services permission to obtain additional discovery about the very same issues from SoundExchange, which is a participant in this proceeding (to the extent the Moving Services do not already have such information). In short, the Moving Services cannot meet the standard for issuance of subpoenas, and the Services’ Motion should therefore be denied.

The Services’ Motion also should be denied for the additional reason that their request is untimely, unduly burdensome, overbroad, and cumulative. As discussed below, the motion is untimely because even if the Judges were to grant the request on April 10, 2015 (the same date on which the Moving Services’ reply brief is due), Apple would be forced to conduct in **two business days** a massive document review and production, which is far beyond what any **participant** has had to perform. In addition, the motion is unduly burdensome and overbroad because it seeks information beyond the royalty rates that Apple pays Sony and Warner for the rights at issue in this proceeding. Finally, the Moving Services’ proposed subpoenas are cumulative. In fact, the Services’ Motion makes clear that they already have the Apple agreements that SoundExchange’s expert Professor Rubinfeld referenced in his opinion, along with documents produced by SoundExchange in this proceeding concerning the negotiation of the Apple agreements. *See* Services’ Motion at 3–8. Thus, the Moving Services’ claim to need

the information sought from Apple to “gain a complete understanding of the Apple agreements,” *id.* at 2, is patently disingenuous as they already have not only the agreements themselves, but also documents from SoundExchange explaining those agreements. Moreover, any additional information that the Moving Services might need regarding the agreements or the parties’ negotiations of those agreements can be obtained from Sony and Warner, both of whom are participants (through SoundExchange) in the Web IV proceeding, rather than from Apple, which is not a participant. As for information regarding the functionality of the iTunes Radio service, that could easily be obtained simply by using the service itself and referring to the well-documented features about the service, which is free and available to anyone with an Internet connection at Apple’s website, [www.apple.com](http://www.apple.com).

In sum, allowing the Moving Services to serve their proposed subpoenas on Apple violates basic principles of fundamental fairness and due process. Accordingly, the Services’ Motion should be denied in its entirety.

### **ARGUMENT**

#### **I. THE STANDARD REQUIRED FOR SUBPOENAS TO ISSUE IS HIGH.**

The Copyright Act authorizes the Judges to issue subpoenas when the Judges’ “resolution of the proceeding would be substantially impaired by the absence of such testimony or production of documents.” *See* 17 U.S.C. § 803(b)(6)(C)(ix). The Judges have interpreted “substantial impairment” to mean that the information sought must be (1) “central to the resolution of the proceeding (or lead to the disclosure of information that is)” and (2) unlikely to otherwise be obtained and presented to the Judges. *See* Order Denying, Without Prejudice, Motions for Issuance of Subpoenas Filed by Pandora Media, Inc. and the National Association of

Broadcasters, Docket No. 14-CRB-0001-WR (2016-2020) (Apr. 3, 2014) (“April 2014 Order”), at 4.

The legislative history makes clear that the Judges’ subpoena power should be used infrequently, particularly where information is sought from nonparticipants. For example, the Register of Copyrights has noted that:

[W]hile the statute grants the CRJs the authority to issue subpoenas in certain circumstances, it does not compel them to issue subpoenas in any circumstance. Furthermore, it is noteworthy that even under the broader grant of subpoena power in the provision initially introduced in the House of Representatives, *Congress stated that it “does not anticipate that the use of subpoena power will become a common occurrence” and that “the CRJs are expected to exercise this power judiciously* and only in those instances where they believe a subpoena is necessary to obtain information that the parties have not provided and that the judges deem necessary to make their decision.

See Register’s Memorandum Opinion on Material Questions of Substantive Law, Docket No. 2009-1 CRB Webcasting III, at 8 (February 22, 2010) (the “Memorandum Opinion”) (*cited in* April 2014 Order).<sup>2</sup> Thus, the Judges have repeatedly denied motions to compel where, as here, providing the information sought would require time-consuming and burdensome review for issues such as attorney-client privilege. See Order Denying the Supplemental Motion of Digital Media Association and Its Member Companies to Compel SoundExchange to Produce Documents Related to the Record Labels’ Promotional Practices Known as Payola, Docket No.

---

<sup>2</sup> Apple notes that no subpoena has in fact been issued by the Board. This raises yet another question and obstacle for Apple. Because the Judges have not actually issued any subpoenas, it is impossible for Apple to know at this time what any hypothetical subpoenas might actually require, and whether any such hypothetical subpoenas would in fact comport with the standard articulated by the Register of Copyrights in its 2010 Memorandum Opinion, which found that nonparticipants may only be subpoenaed where the Judges’ ability to conduct a rate proceeding absent such testimony or information would be “substantially impaired.” See Memorandum Opinion, at 8. Accordingly, Apple hereby reserves all of its rights with respect to any such hypothetical subpoena, including the right to challenge its enforceability and scope in the appropriate forum.

2005-1 CRB DTRA (March 28, 2006) (the “Payola Order”) (denying motion to compel where the privilege review “would take a substantial amount of time and resources”).

Here, as discussed in greater detail below, because the information sought by the Moving Services is (1) not central to this proceeding and (2) has already been, or could be, obtained from SoundExchange, the Services’ Motion does not present an exceptional situation that warrants the use of the Judges’ subpoena power to compel a nonparty to provide documents or testimony. In addition, the Services’ Motion should be denied for the separate and independent reason that it is untimely, unduly burdensome, overbroad, and cumulative. Finally, if the Judges nevertheless determine that the requested subpoenas to Apple should issue, despite the [REDACTED] nature of the agreements and the Moving Services’ ability to obtain information through SoundExchange, the subpoenas should be significantly narrowed and Apple be given sufficient time to appropriately respond, bearing in mind the very significant burden that any such subpoenas would impose on it.

**II. THE SERVICES’ MOTION FAILS TO MEET THE STANDARD ESTABLISHED BY THE COPYRIGHT ACT.**

The Moving Services are unable to meet either prong of the substantial impairment test. *See* 17 U.S.C. § 803(b)(6)(C)(ix).

**A. Apple’s Information Is Not Central to the Proceeding.**

As an initial matter, the Apple agreements specifically state that they are

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Requiring Apple  
to provide the discovery sought by the proposed subpoenas would show that it is impossible for  
parties to enter into [REDACTED] deals in good faith without the risk of being dragged into  
discovery in the most burdensome way possible—as a nonparticipant just days before the close  
of discovery. Moreover, these provisions demonstrate that the requested information simply  
cannot be “central” to this proceeding, as it is nonsensical to suggest that [REDACTED]  
[REDACTED] could be an appropriate  
basis for determining the statutory rates in this proceeding.

Indeed, [REDACTED], the Apple agreements should  
not be considered precedential because, as the Moving Services acknowledge, the iTunes Radio  
service [REDACTED]  
[REDACTED]

[REDACTED] Services’ Motion at 3. Because the Moving Services  
themselves assert that the functionality of the iTunes Radio service differs from that of a service  
permitted under the statutory license, it would be inappropriate to look to the Apple agreements

as benchmarks to help determine the statutory rate<sup>3</sup> and thus information about the Apple agreements cannot be considered “central” to this proceeding.

Furthermore, much of the information requested by the Moving Services far exceeds anything the Judges might require to “gain a complete understanding of the Apple agreements”—whatever that vague and overbroad statement means. *See* Services’ Motion at 2. As a previous Order in this proceeding makes clear, the information the Judges seek regarding an agreement that may serve as a benchmark in a ratemaking proceeding is “as much **contract information** as exists.” April 2014 Order at 4-5 (emphasis added). The Judges have stated that such “contract information” may include license agreements, royalty statements and computations, numbers of performances of sound recordings, number of users, and amounts of revenue (all of which is currently available to the Moving Services from Sony and Warner through SoundExchange). *See id.* at 2, 5 (describing the information Pandora and the NAB requested in their proposed subpoenas as the foregoing, and noting that it “could be central to the resolution of this proceeding”). What “contract information” does not include, however, is the kind of information the Moving Services now belatedly seek from Apple, namely financial projections, negotiation strategy, and future plans for its product. *See* Services’ Motion,

---

<sup>3</sup> The Moving Services claim that they need information from Apple because the extent to which Apple’s service differs from one permitted under the statutory license is not clear from the face of the agreements. This is nonsense. First, given the Moving Services’ concession that the services are in fact different, the extent to which they differ is irrelevant. Second, even if information regarding the functionality of iTunes Radio were necessary, the labels undoubtedly have that information as they know what they agreed to and thus the Moving Services could obtain whatever information they need from SoundExchange and no clarification from Apple is necessary. *See* Summary Order, Docket No. 14-CRB-0001-WR (2016-2020) (March 26, 2015) (“Summary Order”), at 2 (granting additional discovery from SoundExchange in order for the Moving Services to prepare rebuttal testimony). Finally, to the extent there is any question about the functionality of Apple’s free iTunes Radio service, the Moving Services and their counsel can obtain any required information simply by using the service or referring to freely available information from [www.apple.com](http://www.apple.com) and elsewhere, including extensive write-ups of the service. *See, e.g.*, Declaration and Certification of Bonnie L. Jarrett on Behalf of Apple Inc., Exhibit A, submitted contemporaneously herewith.

Attachments A and B at ¶¶ 4-6. Such information plainly is not necessary to determine the performance rate that Apple paid to Sony and Warner, which is the question supposedly raised by Professor Rubinfeld's opinion. Thus, the information that the Moving Services seek is not central to this proceeding and the Moving Services' request to obtain it via subpoenas to nonparticipant Apple should therefore be denied.

**B. Subpoenas Are Unnecessary Because Information About the Apple Agreements Can Be Obtained from Participants to the Proceeding.**

The information the Moving Services seek about (1) the functionality of the iTunes Radio service, *id.* at 3; (2) the compensation paid under the Apple agreements, *id.* at 4; and (3) whether the flat fees paid to the labels should be included in the per-performance royalty rate, *id.* at 5, all can be obtained from Sony and Warner, who are represented in the proceeding by SoundExchange. Regarding functionality, to the extent there is any question about what the iTunes Radio service does, that service is freely accessible to anyone with an Internet connection, which presumably includes the Moving Services and their counsel, and thus there is no need to resort to the extreme measure of a subpoena in order to obtain such information. If for some reason the Moving Services are truly unable to answer their own questions simply by using Apple's free service, they can seek additional information from the labels, which are well aware of how iTunes Radio functions. Similarly, the labels all know, and could tell the Moving Services, how much they have been paid by Apple and as well as the details of their negotiations with Apple. **Indeed, the Moving Services acknowledge as much when they state that subpoenas to Apple are necessary in part because the information sought "ha[s] been withheld by SoundExchange on improper grounds."** Services' Motion at 2 (emphasis added). If SoundExchange in fact possesses the relevant information and is simply refusing to produce it,

then the appropriate remedy would be for the Moving Services to move to compel SoundExchange to produce the allegedly improperly withheld information, rather than seeking to subpoena nonparticipant Apple at the eleventh hour.<sup>4</sup> Indeed, the Judges' March 26th Order already permits the Moving Services to obtain just such additional discovery from SoundExchange, including document requests, interrogatories, and a deposition of SoundExchange's expert. *See* Summary Order, at 2.

In short, it simply is not necessary to resort to the extreme measure of subpoenaing nonparticipant Apple because there exist far less burdensome means by which the Moving Services can obtain the information they claim to need, either from participant SoundExchange or by simply using the iTunesRadio service themselves. Because the Moving Services cannot meet the second prong of the test for substantial impairment, the Services' Motion should be denied.

### **III. THE MOVING SERVICES' REQUESTED DISCOVERY IS UNTIMELY, UNDULY BURDENSOME, OVERBROAD, AND CUMULATIVE.**

The Moving Services' proposed subpoenas to Apple should be rejected for the separate and independent reason that they are untimely, unduly burdensome, overbroad, and cumulative.

#### **A. The Judges' Own Criteria Weigh Against Issuance of Subpoenas to Apple.**

In determining whether requested discovery is unduly burdensome, the Judges "weigh the claimed burden against the potential impact of the requested information on the significant amount of royalties to be paid and received over the 2016-2020 period covered by this

---

<sup>4</sup> In fact, the Judges have already ordered SoundExchange to produce certain documents related to the effect of statutory rates on license fees sought in negotiations with digital service providers, including Apple. *See* Order Granting in Part and Denying in Part Joint Motion by Pandora, iHeart, NAB, NRBNMLC and Sirius to Compel SoundExchange to Produce Negotiating Documents, Docket No. 14-CRB-0001-WR (2016-20) (January 15, 2015) ("Discovery Order 11"), at 3 and 6. Apple should not now be ordered to also provide the same information.

proceeding.” Order on iHeartMedia’s Motion to Compel SoundExchange to Produce Documents in Response to Discovery Requests and on Issues Common to Multiple Motions, Docket No. 14-CRB-0001-WR (2016-20) (January 15, 2015) (“Discovery Order 1”), at 3. Here, both considerations weigh against issuing subpoenas to Apple.

The burden on Apple of having to comply with the requested subpoenas would be enormous, such that it simply is not possible to provide the requested information by April 14, 2015, as the Moving Services have asked. In order to find the particular materials that the Moving Services seek, in just one to two business days, Apple would have to collect hundreds of thousands of documents, engage an e-discovery vendor to process them, assemble a team of contract attorneys to review them for relevance, have its outside counsel review them for privilege before producing the requested materials, and then prepare what inevitably would be a complicated and lengthy privilege log. After all of those tasks are completed, Apple would still need to adequately prepare a witness to be deposed pursuant to Federal Rule of Civil Procedure 30(b)(6) as to the noticed topics. As a practical matter, such an enormous undertaking simply is impossible in the time demanded by the Moving Services.<sup>5</sup> Furthermore, the basic unfairness to Apple is underscored by the fact that the participants in this proceeding undoubtedly had far

---

<sup>5</sup> Mindful of the significant timing issues that such a monumental effort would entail, since the Moving Services filed their motion on March 30, 2015, Apple has repeatedly reached out to them in an effort to negotiate a compromise that would allow the Moving Services and the Judges to obtain whatever information might actually be central to this proceeding on an achievable schedule. The Moving Services, however, have been unable to specify the particular information they need in order to respond to SoundExchange’s corrected expert testimony (which is the purported basis for the Services’ Motion). Instead, the Moving Services have repeatedly asked Apple what it is willing to provide. Apple finds this hard to believe given that the Moving Services are purportedly seeking to rebut specific testimony from a single disclosed expert regarding a highly specific and detailed rate analysis and as to which they have apparently already obtained discovery from SoundExchange. Nevertheless, Apple’s efforts to date to reach some understanding with the Moving Services that would moot their motion have been wholly unsuccessful.

more time to collect, review, and produce documents; prepare privilege logs; and prepare their witnesses for depositions than Apple would if the proposed subpoenas were to issue.

Indeed, given the Moving Services' requests for information concerning negotiations with record labels and information regarding future business plans, both of which would involve numerous communications amongst in-house counsel for Apple about highly sensitive matters, the privilege review alone would be time-consuming and burdensome. Recognizing the significance of this issue, the Copyright Royalty Board has denied discovery requests for precisely this reason. *See Payola Order* (denying motion to compel SoundExchange's production of documents related to the record labels' promotional practices known as "payola," and noting that "[m]any documents within the scope of the requests may be privileged and the review of such documents would take a substantial amount of time and resources that are well beyond the contemplation of the relatively limited discovery ordained in the statute that governs the instant proceedings").

Similarly, there is no single executive at Apple who is privy to financial projections, actual financial statistics regarding the iTunes Radio service, the negotiation of the agreements, and Apple's future plans regarding its product. Thus, preparing a witness for a 30(b)(6) deposition on the requested information will require significant time to prepare, and entail enormous disruption to Apple's business, as multiple high level executives will need to set aside time to share their knowledge with the 30(b)(6) witness. Furthermore, neither Apple nor its counsel has been involved in discovery in this proceeding, which Apple understands has been ongoing since at least November 2014 and in which untold volumes of material relating to the participants' arguments and analyses undoubtedly have been produced. Thus, neither Apple nor its counsel has had access to the prior statements, expert reports, or discovery in this proceeding,

all of which would have to be reviewed in order to prepare a 30(b)(6) witness for a deposition. It is simply unreasonable to expect Apple to produce the requested information, get up to speed on the issues in the proceeding, and prepare a 30(b)(6) witness by April 14, 2015—which would presumably be a matter of days at most after any subpoena issued.

Because discovery has been ongoing for at least five months, the Moving Services had ample opportunity to request information that they believed was relevant to the proceeding from participants, and failing that, from non-parties. Tellingly, however, they did not file the Services' Motion until March 30, 2015—only a month before the hearing in this proceeding is scheduled to begin.<sup>6</sup> Requesting that the Copyright Royalty Board require Apple to undertake significant and expensive discovery in under a week to meet a timetable the participants have known about for months is completely unreasonable. Apple should not be the victim of the manner in which the participants chose to conduct discovery in this proceeding.

Finally, requiring Apple to produce the same information that already is or could be available from a participant will have no impact on the amount of royalties to be paid during 2016-2020. *See* Discovery Order 1, at 3. It is Apple's understanding that SoundExchange already has produced documents relating to Apple's agreements with the labels, including the negotiation of those agreements as well as the actual payments that Apple has made to the labels. Thus, to the extent any information about those agreements might impact the amount of royalties to be paid during 2016-2020, any discovery from nonparticipant Apple would merely be

---

<sup>6</sup> The NAB previously moved for issuance of a subpoena to Apple and the major labels, which request was denied, although the discovery requested in NAB's prior motion was significantly narrower than that sought in the proposed subpoenas at issue here. *See* Order Denying Motion for Subpoenas at 2. Namely, NAB originally requested agreements related to the iTunes Radio service and related information, including royalty statements, computations of compensation, the number of performances of sound recordings, and the amount of advertising revenue. *See id.*

cumulative of the discovery that has been had or could be had from the participants themselves, including SoundExchange.

**B. Rule 45's Analogous Criteria Also Weigh Against Issuing The Requested Subpoenas.**

In the analogous context of subpoenas issued pursuant to Federal Rule of Civil Procedure 45, courts are particularly sensitive to the rights of non-parties and regularly quash or modify subpoenas served on third parties under circumstances such as those presented here. *See, e.g., Watts v. S.E.C.*, 482 F.3d 501, 509 (D.C. Cir. 2007) (“The Rule 45 ‘undue burden’ standard requires district courts supervising discovery to be generally sensitive to the costs imposed on third parties.”) (citing *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 717 (1st Cir. 1998) (“[C]oncern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs.”); *Phillips & Cohen, LLP v. Thorpe*, 300 F.R.D. 16, 18 (D. D.C. 2013) (quashing subpoena served on non-party where production of documents would be unduly burdensome; “the text of Rule 45 makes quite clear that parties and attorneys who issue subpoenas [to nonparties] have an affirmative duty to prevent undue burden or expense to the persons subject to the subpoena”) (internal quotation marks and citation omitted); *Hesco Bastion Ltd. v. Greenberg Traurig LLP*, No. 09-0357 RWR/DAR, 2009 WL 5216932, at \*3 (D. D.C. Dec. 23, 2009) (denying motion to compel pursuant to subpoena issued to nonparty where documents sought were found not to be relevant, and noting that Rule 45 “provides, in pertinent part, that a subpoena may be quashed or modified ‘to avoid imposing undue burden or expense on a person subject to the subpoena’”) (citing Fed. R. Civ. P. 45(c)(1)).

The same considerations that apply to subpoenas issued under Rule 45 are applicable here. Indeed, the Code of Federal Regulations recognize as much, providing that when deciding

whether to grant discovery requests generally the Judges may consider:

(i) whether the burden or expense of producing the requested information or materials outweighs the likely benefit, taking into account the needs and resources of the participants, the importance of the issues at stake, and the probative value of the requested information or materials in resolving such issues, (ii) whether the requested information or materials would be unreasonably cumulative or duplicative, or are obtainable from another source that is more convenient, less burdensome, or less expensive, and (iii) whether the participant seeking the discovery had an ample opportunity by discovery in the proceeding or by other means to obtain the information sought.

37 C.F.R. § 351.5(c)(2). Here, all three criteria weigh against granting the Services' Motion, as

(1) the burden and expense on Apple would be extensive, as noted above, (2) the requested materials are either duplicative of materials already produced in this proceeding or could be obtained from participant SoundExchange, and (3) there was ample opportunity for the Moving Services to seek the requested information from SoundExchange earlier in this proceeding.

Thus, for the same reasons that courts routinely quash subpoenas pursuant to Rule 45, the Judges should refuse to issue the subpoenas requested here.

#### **IV. ANY SUBPOENAS THAT DO ISSUE SHOULD BE NARROWLY TAILORED**

As discussed in greater detail above, the Judges should deny the Services' Motion and refuse to issue subpoenas to non-party Apple because (1) the requested information is not central to this proceeding, (2) it could be obtained from the participants themselves (and as to some information already has been obtained), and (3) the requests would impose an unreasonable burden on nonparticipant Apple. Nevertheless, should the Judges ultimately determine that this ratemaking proceeding would be substantially impaired without information from Apple, Apple respectfully requests that the Judges significantly narrow the scope of the Moving Services' requested subpoenas in order to (1) address the substantial burden issues discussed above, which as a practical matter make it impossible for Apple to comply with any subpoena on the schedule

requested by the Moving Services, by only requiring Apple to provide information related to the effective per-play rate it pays Sony and Warner (but it cannot be overemphasized that no relevant information could come from an agreement that was expressly agreed by the parties to be [REDACTED]), and (2) protect Apple from having to reveal to its contractual counterparties and competitors irrelevant and competitively sensitive information about its negotiating strategy and future plans for its business by denying the Services' Motion as to the remainder of the requested topics.

With respect to Apple's negotiating strategy, the Judges have already determined that such information is irrelevant to this proceeding, and thus even if a subpoena were to issue it should not require production of any such information. *See* Discovery Order 11, at 2 (denying services' motion to compel documents related to the record labels' negotiations with digital services because the services failed to show how such documents "would be 'directly related to' SoundExchange's WDS"); *see also id.* at 6; Discovery Order 1, at 6 (denying motion to compel SoundExchange to produce documents "regarding its internal negotiating strategies in bargaining with iHeart"); Discovery Order 9, Order Granting in Part and Denying in Part Services' Omnibus Motion to Compel SoundExchange to Produce Documents, Docket No. 14-CRB-0001-WR (2016-20) (January 15, 2015), at 4 (denying services' motion to compel SoundExchange to produce "documents related to the negotiation or formation of the Sirius XM and NAB WSA settlement agreements").

With respect to Apple's future business plans, those are likewise irrelevant. Indeed, the Judges only required Sirius XM ("Sirius"), a participant in this proceeding, to produce documents related to its future business plans because Sirius had asserted in its WDS that it was not a "willing buyer/licensee" in 2009, when it agreed to royalty rates that Sirius now claims are

above-market. *See* Discovery Order 5, Order Granting SoundExchange's Motion to Compel Sirius XM to Produce Forecasts, Business Plans, and Competition-Related Documents, Docket No. 14-CRB-0001-WR (2016-20) (January 15, 2015), at 2-3. The Judges granted SoundExchange's motion to compel Sirius's future business plans and related documents so that SoundExchange could determine "whether Sirius's financial position has improved, which would indicate that the [royalty] rates subsequently became more affordable." *Id.* at 3. There is no comparable basis for the Moving Services to probe into nonparticipant Apple's future business plans, as Apple has never asserted that it did not enter into the Apple agreements willingly, and thus such information should likewise be excluded from any subpoena.

With respect to scope, any subpoenas should be temporally limited, as the Judges have previously required participants in this proceeding to produce only those documents dated from and after January 1, 2011. *See* Discovery Order 1, at 3. Inexplicably, however, the Moving Services are demanding discovery from Apple dating back to 2009. *See* Services' Motion, Attachment A at 5. At worst, nonparticipant Apple should not be more burdened than the participants by having to produce documents any documents created prior to January 1, 2011. The fact that the movants are seeking such an extended timeframe from Apple only serves to confirm their obvious intent to burden a non-participant unnecessarily. Nor should Apple be required to provide a deponent on these issues, which as noted above would be highly burdensome and simply not practicable in the time available (at most, a declaration should suffice to meet any need the Moving Services).

Finally, in light of the considerations discussed above, at most the Judges should only require Apple to produce historical rate information, as that is the only information sought by the proposed subpoenas that goes to the stated basis for the subpoenas, namely, the existing

marketplace conditions and rates paid by Apple to Sony and Warner pursuant to the Apple agreements.

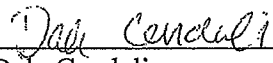
### **CONCLUSION**

For the foregoing reasons, Apple respectfully requests that the Copyright Royalty Board deny the Licensee Services' Motion for Expedited Issuance of a Subpoena to Apple.

Dated: April 8, 2015

Respectfully Submitted,

APPLE INC.

  
\_\_\_\_\_  
Dale Cendali  
Claudia Ray  
Bonnie Jarrett  
Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, NY 10022  
Telephone: (212) 446-4800  
dale.cendali@kirkland.com  
claudia.ray@kirkland.com  
bonnie.jarrett@kirkland.com

# **EXHIBIT A**

Subscribe to CNET Magazine

Connect with us [f](#) [t](#)

**cnet** Search CNET  Reviews News Video How To Games [US Edition](#)

# iTunes Radio for iOS review:

Built-in radio that beats Pandora

By: Jaymar Cabebe / Reviewed: September 18, 2013 / Updated: September 18, 2013

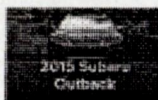
**iTunes Radio (iOS)**  
(Part #: IRAD/O) / Released: Sep 18, 2013



**LG G Flex 2: Second-gen curved smartphone features 5.5-inch screen, Snapdragon 810 and 'self-healing' capabilities (hands-on)**

Original, independent content, re-promoted by sponsor.

COMPARE THESE



CNET EDITORS' RATING

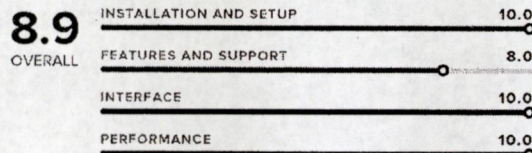


7 USER REVIEWS

**THE GOOD** / Unlike Pandora, iTunes Radio has Featured Stations that are great for discovering both new hits and lesser-known songs. Purchasing music from within the service is a simple, seamless process. The music library is significantly larger than Pandora's.

**THE BAD** / There are no non-music options like talk radio, news, or sports, and there's no access to live Internet radio streams. For now, it's only available in the US.

**THE BOTTOM LINE** / It doesn't offer live radio streams or non-music options, but iTunes Radio is the best way to listen to programmed radio on iOS.



REVIEW SECTIONS /

[Review](#)  
[Specifications](#)  
[User Reviews](#)

CNET > Software > iTunes Radio for iOS

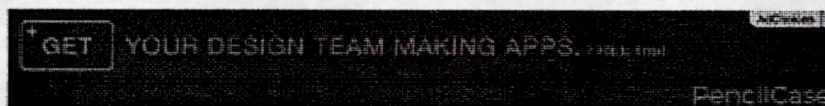
**I** iTunes Radio may be late to the party, but it's still better than Pandora when it comes to streaming programmed radio on iOS. Like its competitor, iTunes Radio lets you create personalized stations based on one or more artists, songs, or genres of your choice, which makes it an attractive alternative to your personal iTunes library and a nice vehicle for discovering new music. Beyond that, though, it offers seamless purchases through iTunes, a curated selection of Featured Stations, and a music library that easily dwarfs Pandora's.



If you're already using the built-in Music app as your mobile media player of choice, then jumping onto the built-in iTunes Radio (new in iOS 7) is almost a no-brainer. And if you're using something else at the moment, you still might want to consider the switch. For a first attempt at a streaming-radio product, iTunes Radio definitely deserves kudos. It is worth mentioning, though, that as of now, it's only available in the US.

#### Content and controls

One thing that clearly sets iTunes Radio apart from competitor Pandora is its Featured Stations. These blend the personal touch of a curated list with the scale and smarts of an underlying algorithm. So far, I've found Apple's Featured offerings to be exceptional, as they range from simpler stations themed around popular genres to more nuanced mixes that combine the styles of a handful of hot artists. There are even stations dedicated to live events and music that's currently trending on Twitter. Altogether, I find Apple's Featured Stations to be more interesting and relevant than those of other services offering hand-picked streams.



Because Apple was able to strike deals with all the major record labels, iTunes Radio already has a sizable music catalog that audiophiles should find attractive. In fact, as of today, Apple's radio service has approximately 27 million tracks in its library, while Pandora has a comparatively miniscule 1 million tracks. Of course, the folks at Pandora might argue that their library carries only the songs people want to hear, but I actually think it's nice to know that Apple's offering caters to niche listeners as well.



iTunes Radio's clean and intuitive layout makes it easy to control playback, fine-tune stations, and even make purchases.

Screenshot by Jaymar Cabebe/CNET

The Now Playing screen is where most of the magic happens. It's got a big piece of album art front and center, with all of the basic playback controls nicely laid out along the bottom. If you're driving or otherwise unable to use these onscreen controls, you can also call on Siri to do things like pause and play a track. Conveniently, you can even ask Siri to give you a song title or skip a song. And in case you're wondering, just like its competitors, iTunes Radio allows you up to six skips per hour, per station.

One thing I love about iTunes Radio is its minimally intrusive ads. Every so often between songs, it will give you an audio ad accompanied by an image in the album art box. Meanwhile, Pandora seems to bombard you with not only audio ads, but also pop-ups and full-screen interstitials that all inevitably get annoying. Of course, you can upgrade to an ad-free experience on either service (via iTunes Match and Pandora One), but for those who don't want to shell out the cash, iTunes Radio will undoubtedly offer a less intrusive experience.

CONTINUE TO NEXT PAGE

01 / 02

#### DON'T MISS



**Samsung Galaxy S6**  
Starting at: **\$199.99**  
★★★★★  
The first great  
smartphone of 2015



**Cree Connected LED Bulb**  
Starting at: **\$14.97**  
★★★★★  
The right smart bulb  
for the right price



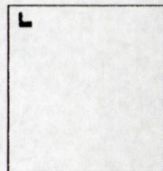
**2015 Subaru Outback**  
Starting at: **\$35,191.00**  
★★★★☆  
New Subaru Outback  
could be best family  
wagon ever



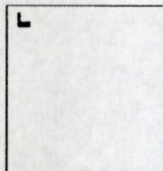
Jaymar Cabebe /

Jaymar Cabebe covers mobile apps and Windows software for CNET. While he may be a former host of the Android Atlas Weekly podcast, he doesn't hate iOS or Mac. Jaymar has worked in online media since 2007. See full bio

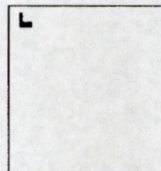
#### DON'T MISS



Apple to offer  
Watch to  
employees at half  
price



The great OLED  
revolution has  
arrived -- at a price



Teardown shows  
Samsung Galaxy  
S6 Edge is tough to  
repair



DISCUSS ITUNES RADIO (IOS)

Conversation powered by Livefyre

## Listen To Free Radio

Listen to Free Streaming Internet Radio Now with the Radio Toolbar



© CBS Interactive Inc. / All Rights Reserved.

[Privacy Policy](#) / [Ad Choice](#) / [Terms of Use](#) / [Mobile User Agreement](#)



### REVIEWS

[All Reviews](#)  
[Audio](#)  
[Cameras](#)  
[Car Tech](#)  
[Desktops](#)  
[Laptops](#)  
[Phones](#)  
[Tablets](#)  
[TVs](#)

### NEWS

[All News](#)  
[Apple](#)  
[Crave](#)  
[Internet](#)  
[Microsoft](#)  
[Mobile](#)  
[Sci-Tech](#)  
[Security](#)  
[Tech Industry](#)

### VIDEO

[All Video](#)  
[Apple Byte](#)  
[CNET On Cars](#)  
[CNET Top 5](#)  
[CNET Update](#)  
[Next Big Thing](#)  
[The 404](#)  
[The Fix](#)  
[XCAR](#)

### MORE

[About CBS](#)  
[Interactive](#)  
[About CNET](#)  
[CNET 100](#)  
[CNET Deals](#)  
[CNET Forums](#)  
[CNET Magazine](#)  
[CNET Mobile](#)  
[Help Center](#)  
[Permissions](#)

### FOLLOW CNET VIA...

[Facebook](#)  
[Twitter](#)  
[Google+](#)  
[YouTube](#)  
[LinkedIn](#)  
[Tumblr](#)  
[Pinterest](#)  
[Newsletters](#)  
[RSS](#)

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.

**RECEIVED**

APR 08 2015

**Copyright Royalty Board**

In the Matter of

DETERMINATION OF ROYALTY RATES  
FOR DIGITAL PERFORMANCE IN SOUND  
RECORDINGS AND EPHEMERAL  
RECORDINGS (*WEB IV*)

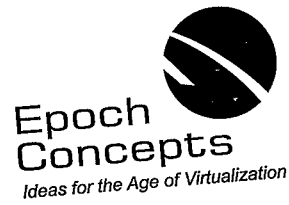
Docket No. 14-CRB-0001-WR  
(2016-2010)

**REDACTION LOG FOR APPLE INC.'S OPPOSITION TO LICENSEE SERVICES'  
MOTION FOR EXPEDITED ISSUANCE OF SUBPOENAS TO APPLE, INC.**

Apple Inc. ("Apple") hereby submits the following list of redactions from Apple's Opposition to Licensee Services' Motion for Expedited Issuance of Subpoenas to Apple, filed April 8, 2015. The undersigned certifies, in compliance with 37 C.F.R. § 350.4(e)(1), and based on the Declaration of Bonnie L. Jarrett submitted herewith, that the listed redacted materials are properly designated confidential and "RESTRICTED."

Document	Page/Paragraph/Exhibit	General Description
Apple's Opposition to Licensee Services' Motion for Expedited Issuance of Subpoenas to Apple	Pgs. 2, 3, 6, 7, 16	Restricted information concerning confidential terms of license agreements between Apple and Sony Music Entertainment ("Sony"), and Apple and Warner Music, Inc. ("Warner"). Public disclosure of this information could place Apple, Sony, Warner, or all of them at a competitive disadvantage.
Apple's Opposition to Licensee Services' Motion for Expedited Issuance of	Pg. 7	Contains information designated restricted by other

# ATTACHED NOTES



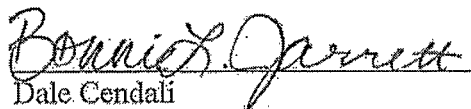
*no copies of  
these 3 docs*

Subpoenas to Apple		participants.
--------------------	--	---------------

Dated: April 8, 2015

Respectfully Submitted,

APPLE INC.



Dale Cendali

Claudia Ray

Bonnie Jarrett

Kirkland & Ellis LLP

601 Lexington Ave.

New York, NY 10022

Telephone: (212) 446-4800

dale.cendali@kirkland.com

claudia.ray@kirkland.com

bonnie.jarrett@kirkland.com

**RECEIVED**

APR 08 2015

**CERTIFICATE OF SERVICE****Copyright Royalty Board**

I hereby certify that I caused a copy of the foregoing PUBLIC version of Apple Inc.'s (i) Opposition to Licensee Services' Motion for Issuance of Subpoena; (ii) Redaction Log; and (iii) Declaration of Bonnie L. Jarrett have been served this 8th day of April 2015 via electronic mail and United States mail on the following persons:

***Participants***

Kurt Hanson AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 <a href="mailto:kurt@accuradio.com">kurt@accuradio.com</a> Telephone: (312) 284-2440 Facsimile: (312) 284-2450 <i>AccuRadio, LLC</i>	George D. Johnson, an individual d.b.a. Geo Music Group 23 Music Square East, Suite 204 Nashville, TN 37203 <a href="mailto:george@georgejohnson.com">E-mail: george@georgejohnson.com</a> Telephone: (615) 242-9999 <i>George D. Johnson (GEO), an individual and digital sound recording copyright creator d. b. a. Geo Music Group</i>
Kevin Blair Brian Gantman Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 <a href="mailto:kblair@kloveairl.com">kblair@kloveairl.com</a> <a href="mailto:bgantman@kloveairl.com">bgantman@kloveairl.com</a> Telephone: (916) 251-1600 Facsimile: (916) 251-1731 <i>Educational Media Foundation</i>	Donna K. Schneider Associate General Counsel, Litigation & IP iHeartMedia, Inc. 200 E. Basse Rd. San Antonio, TX 78209 <a href="mailto:DonnaSchneider@iheartmedia.com">DonnaSchneider@iheartmedia.com</a> Telephone: (210) 832-3468 Facsimile: (210) 832-3127 <i>iHeartMedia, Inc.</i>
Frederick Kass Intercollegiate Broadcasting System, Inc. (IBS) 367 Windsor Highway New Windsor, NY 12553-7900 <a href="mailto:ibs@ibsradio.org">ibs@ibsradio.org</a> <a href="mailto:ibshq@aol.com">ibshq@aol.com</a> Telephone: (845) 565-0003 Facsimile: (845) 565-7446 <i>Intercollegiate Broadcasting System, Inc. (IBS)</i>	Jane Mago, Esq. Suzanne Head 1771 N Street, NW Washington, DC 20036 <a href="mailto:imago@nab.org">imago@nab.org</a> <a href="mailto:shead@nab.org">shead@nab.org</a> Telephone: (202) 429-5459 Facsimile: (202) 775-3526 <i>National Association of Broadcasters (NAB)</i>

<p>Russ Hauth, Executive Director  Hary Hendrickson, Chairman  3003 Snelling Avenue, North  Saint Paul, MN 55113  <a href="mailto:russh@salem.cc">russh@salem.cc</a>  <a href="mailto:hphendrickson@unwsp.edu">hphendrickson@unwsp.edu</a>  Telephone: (651) 631-5000  Facsimile: (651) 631-5086  <i>National Religious Broadcasters  NonCommercial Music License Committee  (NRBNMLC)</i></p>	<p>Gregory A. Lewis  National Public Radio, Inc.  1111 North Capital Street, NE  Washington, DC 20002  <a href="mailto:glewis@npr.org">glewis@npr.org</a>  Telephone: (202) 513-2050  Facsimile: (202) 513-3021  <i>National Public Radio, Inc. (NPR)</i></p>
<p>Patrick Donnelly  Sirius XM Radio, Inc.  1221 Avenue of the Americas  36th Floor  New York, NY 10020  <a href="mailto:patrick.donnelly@siriusxm.com">patrick.donnelly@siriusxm.com</a>  Telephone: (212) 584-5100  Facsimile: (212) 584-5200  <i>Sirius XM Radio Inc.</i></p>	<p>Cynthia Greer  Sirius XM Radio, Inc.  1500 Eckington Place, NE  Washington, DC 20002  <a href="mailto:cynthia.greer@siriusxm.com">cynthia.greer@siriusxm.com</a>  Telephone: (202) 380-1476  Facsimile: (202) 380-4592  <i>Sirius XM Radio Inc.</i></p>
<p>Christopher Harrison  Pandora Media, Inc.  2101 Webster Street, Suite 1650  Oakland, CA 94612  <a href="mailto:charrison@pandora.com">charrison@pandora.com</a>  Telephone: (510) 858-3049  Facsimile: (510) 451-4286  <i>Pandora Media, Inc.</i></p>	<p>David Oxenford  WILKINSON BARKER KNAUER, LLP  2300 N Street, NW, Suite 700  Washington, DC 20037  <a href="mailto:doxenford@wbklaw.com">doxenford@wbklaw.com</a>  Telephone: (202) 373-3337  Facsimile: (202) 783-5851  <i>Counsel for Educational Media Foundation  and National Association of Broadcasters  (NAB)</i></p>
<p>Jeffrey J. Jarmuth  Law Offices of Jeffrey J. Jarmuth  34 E. Elm Street  Chicago, IL 60611-1016  Telephone: (312) 335-9933  Facsimile: (312) 822-1010  <a href="mailto:Jeff.jarmuth@jarmuthlawoffices.com">Jeff.jarmuth@jarmuthlawoffices.com</a>  <i>Counsel for AccuRadio, LLC</i></p>	<p>William Malone  40 Cobbler's Green  205 Main Street  New Canaan, CT 06840  <a href="mailto:Malone@ieee.org">Malone@ieee.org</a>  Telephone: (203) 966-4770  <i>Counsel for Harvard Radio Broadcasting  Co., Inc. (WHRB) and Intercollegiate  Broadcasting System, Inc. (IBS)</i></p>

<p> Bruce Joseph, Karyn Ablin  Michael Sturm, Jillian Volkmar  WILEY REIN LLP  1776 K Street, NW  Washington, DC 20006  <a href="mailto:bjoseph@wileyrein.com">bjoseph@wileyrein.com</a>  <a href="mailto:kablin@wileyrein.com">kablin@wileyrein.com</a>  <a href="mailto:msturm@wileyrein.com">msturm@wileyrein.com</a>  <a href="mailto:JVolkmar@wileyrein.com">JVolkmar@wileyrein.com</a>  Telephone: (202) 719-7000  Facsimile: (202) 719-7049  <i>Counsel for National Association of Broadcasters (NAB)</i> </p>	<p> Kenneth L. Steinthal, Joseph R. Wetzel  Ethan Davis  KING &amp; SPALDING LLP  101 Second Street, Suite 2300  San Francisco, CA 94105  <a href="mailto:ksteinthal@kslaw.com">ksteinthal@kslaw.com</a>  <a href="mailto:jwetzel@kslaw.com">jwetzel@kslaw.com</a>  <a href="mailto:edavis@kslaw.com">edavis@kslaw.com</a>  Telephone: (415) 318-1200  Facsimile: (415) 318-1300  <i>Counsel for National Public Radio, Inc. (NPR)</i> </p>
<p> Mark Hansen, John Thorne  Evan Leo, Scott Angstreich, Kevin Miller,  Caitlin Hall, Igor Heiman, Leslie Pope,  Matthew Huppert  KELLOGG, HUBER, HANSEN, TODD,  EVANS &amp; FIGEL, P.L.L.C.  1615 M Street, NW, Suite 400  Washington, DC 20036  <a href="mailto:Mhansen@khhte.com">Mhansen@khhte.com</a>  <a href="mailto:Jthorne@khhte.com">Jthorne@khhte.com</a>  <a href="mailto:eleo@khhte.com">eleo@khhte.com</a>  <a href="mailto:sangstreich@khhte.com">sangstreich@khhte.com</a>  <a href="mailto:kmlillerAkhhte.com">kmlillerAkhhte.com</a>  <a href="mailto:chall@khhte.com">chall@khhte.com</a>  <a href="mailto:ihelman@khhte.com">ihelman@khhte.com</a>  <a href="mailto:lpope@khhte.com">lpope@khhte.com</a>  <a href="mailto:mhuppert@khhte.com">mhuppert@khhte.com</a>  Telephone: (202) 326-7900  Facsimile: (202) 326-7999  <i>Counsel iHeartMedia, Inc.</i> </p>	<p> R. Bruce Rich, Todd Larson  Sabrina Perelman, Benjamin E. Marks  WEIL, GOTSHAL &amp; MANGES LLP  767 Fifth Avenue  New York, NY 10153  <a href="mailto:r.bruce.rich@weil.com">r.bruce.rich@weil.com</a>  <a href="mailto:todd.larson@weil.com">todd.larson@weil.com</a>  <a href="mailto:sabrina.perelman@weil.com">sabrina.perelman@weil.com</a>  <a href="mailto:benjamin.marks@weil.com">benjamin.marks@weil.com</a>  Telephone: (212) 310-8170  Facsimile: (212) 310-8007  <i>Counsel for Pandora Media, Inc.</i> </p>
<p> Karyn Ablin  Jennifer Elgin  WILEY REIN LLP  1776 K St. N.W.  Washington, DC 20006  <a href="mailto:kablin@wileyrein.com">kablin@wileyrein.com</a>  <a href="mailto:jelgin@wileyrein.com">jelgin@wileyrein.com</a>  Telephone: (202) 719-7000  Facsimile: (202) 719-7049  <i>Counsel for National Religious Broadcasters NonCommercial Music License Committee (NRBNMLC)</i> </p>	<p> Jacob B. Ebin  Akin Gump Strauss Hauer &amp; Feld LLP  One Bryant Park  Bank of America Tower  New York, NY 10036-6745  <a href="mailto:iebin@akingump.com">iebin@akingump.com</a>  Telephone: (212) 872-7483  Facsimile: (212) 872-1002  <i>Counsel for Pandora Media Inc.</i> </p>

<p>Gary R. Greenstein  WILSON SONSINI GOODRICH &amp; ROSATI  1700 K Street, NW, 5th Floor  Washington, DC 20006  <a href="mailto:ggreenstein@wsgr.com">ggreenstein@wsgr.com</a>  Telephone: (202) 973-8849  Facsimile: (202) 973-8899  <i>Counsel for Pandora Media Inc.</i></p>	<p>Paul Fakler  Arent Fox LLP  1675 Broadway  New York, NY 10019  <a href="mailto:Paul.Faklerarentfox.com">Paul.Faklerarentfox.com</a>  Telephone: (212) 484-3900  Fax: (212) 484-3990  <i>Counsel for Sirius XM Radio Inc.</i></p>
<p>Martin F. Cunniff  Jackson D. Toof  Arent Fox LLP  1717 K Street, N.W.  Washington, D.C. 20006-5344  <a href="mailto:Martin.Cunniff@arentfox.com">Martin.Cunniff@arentfox.com</a>  <a href="mailto:Jackson.Toof@arentfox.com">Jackson.Toof@arentfox.com</a>  Telephone: (202) 857-6000  Fax: (202) 857-6395  <i>Counsel for Sirius XM Radio Inc.</i></p>	<p>Catherine Gellis  P.O. Box 2477  Sausalito, CA 94966  <a href="mailto:cathy@cgcounsel.com">cathy@cgcounsel.com</a>  Telephone: (202) 642-2849  <i>Counsel for College Broadcasters Inc. (CBI)</i></p>
<p>Antonio E. Lewis  King &amp; Spalding, LLP  100 N. Tryon Street, Suite 3900  Charlotte, NC 28202  Tel: 704-503-2583  Fax: 704-503-2622  E-Mail: <a href="mailto:alewis@kslaw.com">alewis@kslaw.com</a>  <i>Counsel for National Public Radio, Inc. (NPR)</i></p>	<p>David Golden  CONSTANTINE CANNON LLP  1001 Pennsylvania Ave. NW, Suite 1300N  Washington, DC 20004  <a href="mailto:dgolden@constantinecannon.com">dgolden@constantinecannon.com</a>  Telephone: (202) 204-3500  Facsimile: (202) 204-3501  <i>Counsel for College Broadcasters Inc. (CBI)</i></p>

<p>Glenn D. Pomerantz  Kelly M. Klaus  Anjan Choudhury  Melinda E. LeMoine  Kuruvilla J. Olasa  Jonathan Blavin  Rose Leda Ehler  Jennifer L. Bryant  Munger, Tolles &amp; Olson LLP  355 S. Grand Avenue, 35th Floor  Los Angeles, CA 90071-1560  <a href="mailto:Glenn.Pomerantz@mto.com">Glenn.Pomerantz@mto.com</a>  <a href="mailto:Kelly.Klaus@mto.com">Kelly.Klaus@mto.com</a>  <a href="mailto:Anjan.Choudhury@mto.com">Anjan.Choudhury@mto.com</a>  <a href="mailto:Melinda.LeMoine@mto.com">Melinda.LeMoine@mto.com</a>  <a href="mailto:Kuruvill.Olasa@mto.com">Kuruvill.Olasa@mto.com</a>  <a href="mailto:Jonathan.Blavin@mto.com">Jonathan.Blavin@mto.com</a>  <i>Counsel for SoundExchange</i></p>	<p>C. Colin Rushing  Bradley E. Prendergast  SoundExchange, Inc.  733 10th Street, NW, 10th Floor  Washington, DC 20001  <a href="mailto:crushing@soundexchange.com">crushing@soundexchange.com</a>  <a href="mailto:bprendergast@soundexchange.com">bprendergast@soundexchange.com</a>  <i>SoundExchange, Inc.</i></p>
<p>Dale M. Cendali, Esq.  Kirkland &amp; Ellis LLP  601 Lexington Avenue  New York, NY 10022  <a href="mailto:Dale.cendali@kirkland.com">Dale.cendali@kirkland.com</a>  <i>Counsel for Beats Music, LLC</i></p>	<p>Jeffrey Coviello  Melissa A. Finkelstein  Ryan A. Kane  Wollmuth Maher &amp; Deutsch LLP  500 Fifth Avenue  New York, NY 10110  <a href="mailto:jcoviello@wmd-law.com">jcoviello@wmd-law.com</a>  <a href="mailto:mfinkelstein@wmd-law.com">mfinkelstein@wmd-law.com</a>  <a href="mailto:rkane@wmd-law.com">rkane@wmd-law.com</a>  <i>Counsel for Spotify USA Inc.</i></p>
<p>Kenneth Steinthal  Joseph Wetzel  King &amp; Spalding LLP  101 Second Street, Suite 2300  San Francisco, CA 94105  <a href="mailto:ksteinthal@kslaw.com">ksteinthal@kslaw.com</a>  <a href="mailto:jwetzel@kslaw.com">jwetzel@kslaw.com</a>  <i>Counsel for Rhapsody International, Inc.</i></p>	



Bonnie L. Jarrett  
Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, NY 10022  
Telephone: (212) 446-4800  
[bonnie.jarrett@kirkland.com](mailto:bonnie.jarrett@kirkland.com)

**Copyright Royalty Board**

**Docket No. 14-CRB-0001-WR  
(2016-2010)**

**DECLARATION AND CERTIFICATION OF BONNIE L. JARRETT ON BEHALF OF  
APPLE INC.**

1. I am one of the counsel for Apple Inc. (“Apple”) in the above-captioned proceeding, and I respectfully submit this Declaration in support of the restricted version of Apple’s Opposition to the Licensee Services’ Motion for Issuance of Subpoenas to Apple.

2. In compliance with the Copyright Royalty Judges' Protective Order, dated October 10, 2014, I submit this declaration describing the materials Apple has designated as RESTRICTED and the basis for those designations, pursuant to Section IV.C of the Protective Order. I have determined to the best of my knowledge, information, and belief that the materials described on Apple's Redaction Log contain confidential information.

3. The confidential information comprises or relates to information designated RESTRICTED by other participants in this proceeding. Apple has designated such information as RESTRICTED in order to maintain its confidentiality in accordance with Section IV.B of the Protective Order.

4. Pursuant to the terms of the Protective Order, Apple is submitting under seal the materials designated RESTRICTED and redacting such materials from the Public version of its submission.

5. Attached hereto as Exhibit A is a true and correct copy of a review of Apple's iTunes Radio Service a September 18, 2013 CNET.com review, available at <http://www.cnet.com/products/itunes-radio-ios/>.

Pursuant to 28 U.S.C. § 1746 and § 350.4(e), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: April 8, 2015

Respectfully Submitted,

APPLE INC.

A handwritten signature in cursive script, appearing to read "Bonnie Jarrett", is written over a horizontal line.

Dale Cendali  
Claudia Ray  
Bonnie Jarrett  
Kirkland & Ellis LLP  
601 Lexington Ave.  
New York, NY 10022  
Telephone: (212) 446-4800  
dale.cendali@kirkland.com  
claudia.ray@kirkland.com  
bonnie.jarrett@kirkland.com